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July 18, 2018

VIA ELECTRONIC FILING

David F. Butler, Esquire
Public Service Commission of South Carolina
101 Executive Center Drive
Columbia, South Carolina 29210

RE: Friends of the Earth and Sierra Club, Complainant/Petitioner v.
South Carolina Electric & Gas Company, Defendant/Respondent
Docket No. 2017-207-E

Request of the Office of Regulatory Staff for Rate Relief to South
Carolina Electric & Gas Company's Rates Pursuant to S.C. Code
Ann. § 58-27-920
Docket No. 2017-305-E

Joint Application and Petition of South Carolina Electric & Gas
Company and Dominion Energy, Incorporated for Review and
Approval of a Proposed Business Combination between SCANA
Corporation and Dominion Energy, Incorporated, as May Be
Required, and for a Prudency Determination Regarding the
Abandonment of the V.C. Summer Units 2 & 3 Project and
Associated Customer Benefits and Cost Recovery Plans
Docket No. 2017-370-E

Dear Mr. Butler:

Enclosed is a copy of the Joint Response of South Carolina Electric & Gas Company and Dominion Energy, Incorporated to the Office of Regulatory Staff's Motion to Admit Deposition Testimony From These and Other Proceedings as Evidence and Request to Take Deposition Testimony of Witnesses by Oral Deposition ("Joint Response").

By copy of this letter we are serving counsel for the Office of Regulatory Staff as well as the other parties of record with a copy the Joint Response and enclose a certificate of service to that effect.

(Continued . . .)

David F. Butler, Esquire
July 18, 2018
Page 2

If you have any questions, please do not hesitate to contact us.

Very truly yours,



K. Chad Burgess

KCB/kms
Enclosure

cc: All Parties of Record in Docket No. 2017-207-E
All Parties of Record in Docket No. 2017-305-E
All Parties of Record in Docket No. 2017-370-E

**THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA
DOCKET NOS. 2017-207-E, 2017-305-E, AND 2017-370-E**

| | | |
|--|---|------------------------------------|
| In Re: Friends of the Earth and Sierra Club, |) | |
| Complainants/Petitioners, v. South |) | |
| Carolina Electric & Gas Co., |) | |
| Defendant/Respondent. |) | |
| |) | |
| In Re: Request of the South Carolina Office |) | JOINT RESPONSE TO SOUTH |
| of Regulatory Staff for Rate Relief to |) | CAROLINA OFFICE OF |
| SCE&G Rates Pursuant to S.C. Code |) | REGULATORY STAFF'S MOTION |
| Ann. § 58-27-920 |) | TO ADMIT DEPOSITION |
| |) | TESTIMONY FROM THESE AND |
| In Re: Joint Application and Petition of |) | OTHER PROCEEDINGS AS |
| South Carolina Electric & Gas |) | EVIDENCE AND REQUEST TO |
| Company and Dominion Energy, |) | TAKE TESTIMONY OF WITNESSES |
| Incorporated for Review and |) | BY ORAL DEPOSITION |
| Approval of a Proposed Business |) | |
| Combination between SCANA |) | |
| Corporation and Dominion Energy, |) | |
| Incorporated, as May be Required, |) | |
| and for a Prudency Determination |) | |
| Regarding the Abandonment of the |) | |
| V.C. Summer Units 2 & 3 Project |) | |
| and Associated Customer Benefits |) | |
| and Cost Recovery Plans |) | |

INTRODUCTION

South Carolina Electric & Gas Company ("SCE&G") and Dominion Energy, Inc. ("Dominion") (collectively, the "Joint Applicants") hereby submit their Response to South Carolina Office of Regulatory Staff's ("ORS") July 13, 2018 Motion to Admit Deposition Testimony From These and Other Proceedings as Evidence ("Motion") as well as its Request to Take Testimony of Witnesses by Oral Deposition ("Deposition Request").

In light of the Hearing Officer's recent directive noting that "[i]t would be helpful . . . to have SCE&G discuss its lack of consent to the ORS Motion, and any other explanation that SCE&G cares to give," the Joint Applicants will first explain the circumstances surrounding ORS's filing of the Motion and Deposition Request. Order No. 2018-91-H, p. 1. ORS has

represented to the Commission that it “consulted with the other parties and only SCE&G has not consented to the Commission making this prehearing order to allow deposition testimony.” Motion at 7. Its “consultation”—and only communication with SCE&G regarding these filings—consisted of a voicemail left for SCE&G’s counsel late last Friday afternoon, less than an hour before it submitted the filings. SCE&G’s counsel returned the call within 8 minutes, informing ORS that he could not consent to the filings without conferring with SCE&G. Less than 45 minutes later, SCE&G received notice that the Motion and Deposition Request had been filed with the Commission.

With more time to evaluate ORS’s request, and a reasonable meet and confer as required by South Carolina Rule of Civil Procedure 11(a), the parties might have been able to narrow this dispute. Without further engagement from ORS, however, SCE&G cannot consent to a “blanket” ruling admitting any and all deposition testimony from other litigation proceedings in light of ORS’s repeated refusal to agree to confidentiality terms that have been accepted by the other parties in those proceedings. Further, SCE&G cannot preemptively agree to admit deposition testimony when it is unknown whether the testimony will ultimately be admissible under the South Carolina Rules of Evidence (“SCRE”).

In light of these concerns, while SCE&G remains willing to discuss the necessity of these depositions and the terms under which they should be conducted, the parties must come to an agreement on coordination with the depositions in the other litigation proceedings related to the Project as well as how the parties will treat confidential information, testimony, and documents in the various proceedings.

DISCUSSION

I. ORS's Motion Should be Denied Because ORS has Not Shown that Any Specific Testimony is Admissible Under the SCRE.

In its Motion, ORS urges the Commission to issue a “blanket rule” admitting any and all deposition testimony from other proceedings—including testimony that has yet to be given—to “further the interests of justice.” Motion at 5-6. According to ORS, obtaining a ruling on the admissibility of testimony before the Commission even knows what that testimony will be will “improve efficiency for the hearing.” *Id.* at 6-7. Neither the Commission Regulations nor the SCRE supports such distorted logic.

The only authorities cited in ORS's Motion in support of its claim that the Commission may determine the admissibility of testimony before knowing its substance are Commission Regulations 103-834 and 103-846 and Rules 801(d)(2) and 804(b)(1) of the SCRE. *See id.* at 4-5. “Regulation 103-846 states that ‘[i]rrelevant, immaterial or unduly repetitious evidence shall be excluded’ and the civil rules of evidence shall apply in the hearings before the Commission.” *Daufuskie Island Util. Co., Inc. v. S.C. Office of Reg. Staff*, 420 S.C. 305, 314 (2017). “***Subject to these requirements***,” Commission Regulation 103-846 provides that “when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form.” S.C. Code Ann. Regs. 103-846 (emphasis added). It does not authorize—much less *encourage*—the Commission to blindly admit testimony from unidentified deponents in other proceedings without determining that the specific testimony is admissible under the SCRE. *See* Motion at 4. Nor is it any answer for ORS to rely on Regulation 103-834, which merely authorizes parties to seek depositions *in this proceeding*, or Rules 801(d) and 804(b) of the SCRE which define hearsay and exceptions to the rule against hearsay. Even if ORS could establish that specific testimony is non-hearsay or falls within a hearsay exception, that

does not excuse ORS from demonstrating that the testimony is otherwise admissible under the SCRE. ORS did not—and cannot—do so.

ORS has made no attempt to show that specific testimony from other proceedings is relevant to the claims at issue in this case. In fact, ORS has not even identified the specific witnesses whose testimony it seeks to admit. Indeed, ORS asks the Commission to make a “blanket rule” *admitting* testimony from depositions that *have not even happened yet*. See *Daufuskie*, 420 S.C. at 314 (“Although all relevant evidence is generally admissible, subject to certain exceptions, irrelevant evidence is never admissible. Additionally, relevant evidence must be excluded when its probative value is substantially outweighed by the danger of unfair prejudice, confusion, or needless repetition.”). This is premature and inappropriate.

II. ORS’s Deposition Request Should be Limited.

SCE&G agrees that depositions are required in this matter, and it does not dispute that some measure of coordination among the parties to this matter and the parties to related proceedings is appropriate. But to date, ORS has not suggested any measure of coordination; in its hastily-filed motion, ORS simply demands that it have the ability to pursue depositions as it desires, and that it be allowed to pick and choose the terms under which it is able to use testimony from other proceedings in this matter. Perhaps had ORS engaged in a meaningful meet-and-confer on this motion, as the rules require, SCE&G and ORS would have been able to narrow this dispute. Putting aside the activity that led to this motion, SCE&G remains willing to discuss the necessity of depositions, and the terms under which those depositions should be conducted. Any agreement to conduct depositions in this matter, or to coordinate depositions in this case with those conducted in other litigation related to the Project, must account for at least the following concerns.

To the extent the Commission grants ORS’s Deposition Request and permits ORS to depose witnesses who overlap with the ratepayer litigation, the Commission should require ORS


to coordinate those depositions with the existing litigation on reasonable terms. Specifically, SCE&G asks that the Commission order: (1) that ORS shall be subject to the same terms governing depositions in the ratepayer litigation, including but not limited to any applicable confidentiality agreements applicable in the other proceeding; and (2) that ORS coordinate with counsel for other parties, including SCE&G, to avoid duplicative depositions.

ORS is well aware of its obligations to maintain confidentiality of SCE&G information. But to date, ORS has been largely unwilling to abide by confidentiality terms in other litigation related to the Project, even those that it has committed to accept in this case. ORS cannot demand coordinated depositions without coming to acceptable terms on confidentiality. Relatedly, to the extent ORS wishes to rely on deposition testimony from other matters, ORS must coordinate with SCE&G and counsel for the parties in these other matters on the depositions it wishes to conduct. These are reasonable and customary terms for discovery procedures, and ORS cannot use its position in this proceeding to flout them.

CONCLUSION

WHEREFORE, for the foregoing reasons, Defendant/Respondent respectfully requests that the Commission deny ORS's Motion in its entirety and limit ORS's Deposition Request as discussed herein.

Respectfully submitted, this 18th day of July, 2018.

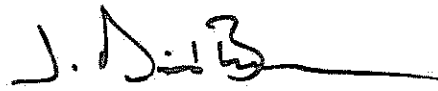


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BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NOS. 2017-207-E, 2017-305-E, AND 2017-370-E

[illegible]

This is certify that I caused to be served on July 18, 2018, one (1) copy of the **Joint Response of South Carolina Electric & Gas Company and Dominion Energy, Incorporated to the Office of Regulatory Staff's Motion to Admit Deposition Testimony From These and Other Proceedings as**

Evidence and Request to Take Deposition Testimony of Witnesses by Oral Deposition (“Joint Response”) to the persons named below via electronic mail only at the addresses set forth:

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